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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

_____	§	
In re:	§	CASE NO. 08-45664-DML-11
	§	CHAPTER 11
PILGRIM'S PRIDE CORPORATION, <i>et al.</i> ,	§	
	§	JOINTLY ADMINISTERED
Debtors.	§	
	§	Debtors' Amended Joint Plan of
	§	Reorganization (Docket #4035)
_____	§	

OBJECTION OF UNITED STATES DEPARTMENT OF AGRICULTURE
TO DEBTORS' AMENDED JOINT PLAN
OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

The United States of America on behalf of the United States Department of Agriculture ("USDA") on behalf of its agencies and subdivisions, including but not limited to the Food Safety and Inspection Service ("FSIS"), the Grain Inspection, Packers and Stockyards Administration ("GIPSA"), the Agricultural Marketing Service ("AMS"), the Food and Nutrition Service ("FNS"), a Governmental Unit, and a party in interest, with FSIS being a creditor at the time of the filing of the case, files this objection to the "Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (As Modified)" filed November 17,

2009, (Docket #4035) (“Plan”) by Debtors Pilgrim’s Pride Corporation, *et al.*, (“Debtors” or “Pilgrim’s Pride”) and would show the Court:

SUMMARY OF THE OBJECTION

The USDA, on behalf of the FSIS, GIPSA, AMS, and FNS, objects to the discharge, injunction, exculpation, and release terms and provisions of the Plan as being over-broad in their application to the USDA, FSIS, GIPSA, AMS, FNS and other Governmental Units of the United States of America. There is no authority to excuse non-compliance by the Debtor and the Reorganized Debtor with applicable federal law and regulations or to excuse, release, or bar appropriate actions by those agencies under federal law and regulations.

The USDA proposes to remedy this objection with the following addition to the Plan and the order of confirmation:

Nothing in the Amended Plan or the order of confirmation shall effect a release of any claim by the United States of America (“United States”) or any of its agencies, departments, or subdivisions whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws, criminal laws, or police and regulatory powers, laws, and regulations of the United States against any party or person, nor shall anything in the Amended Plan or the order of confirmation enjoin the United States from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, the environmental laws, criminal laws, or police and regulatory powers, laws, and regulations of the United States against such persons or parties, nor shall anything in the Amended Plan or order of confirmation exculpate any party or person from any liability to the United States, any of its agencies, departments or subdivisions whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, criminal laws, or police and regulatory powers, laws, and regulations of the United States against any party or person. This includes, without limitation, the Food Safety and Inspection Service, the Grain Inspection, Packers and Stockyards Administration, the Agriculture Marketing Service, and the Food and Nutrition Service of the United States Department of Agriculture. The aforementioned persons and parties include without limitation the Debtors, Reorganized Debtors, and non-debtors.

BACKGROUND ON USDA, FSIS, GIPSA, AMS, FNS

A. Food Safety and Inspection Service (FSIS)

The Food Safety and Inspection Service (“FSIS”) of the United States Department of Agriculture (“USDA”) was owed money by Pilgrim’s Pride for prepetition overtime and/or holiday poultry inspection services provided to them under section 21 U.S.C. §§ 468 of the Poultry Products Inspection Act and regulations enacted thereunder (9 C.F.R. §§ 381.38, and 381.39), and under 7 U.S.C. § 2219a, and/or pre-petition voluntary inspection services provided to them under section 1622 (7 U.S.C. § 1622) of the Agricultural Marketing Act of 1946, as amended (7 U. S.C. 1621 et seq.). The monies owed were paid by Pilgrim’s Pride after the bankruptcy case was filed.

The FSIS administers the Poultry Products Inspection Act (“PPIA”) (21 U.S.C. § 451 et seq.). This act, and the regulations enacted under it regulate the slaughter of poultry, and the preparation and processing of poultry products in order to prevent the distribution of poultry products that are adulterated or misbranded (21 U.S.C. §§ 452) . The PPIA requires establishments, except those that are exempt from federal inspection, that prepare poultry products for distribution in interstate or foreign commerce to have the poultry products prepared federally inspected (21 U.S.C. §§ 455). Exempt establishment include retail stores, restaurants.

Establishments that solely prepare poultry products for distribution within “designated states” are also required to have their poultry products federally inspected, unless they are exempt from the requirements of federal inspection. A state becomes a designated state under the PPIA when the Secretary of Agriculture determines that it has failed to develop or is not effectively enforcing with respect to all establishments within its jurisdiction, except for

establishments that are exempt from federal inspection, requirements at least equal to those imposed under sections 451 to 453, 455 to 459, and 461 to 467d of the PPIA (§ 454(c)).

Poultry establishments are provided inspection services free of charge during their non-overtime and non-holiday hours of operation. Establishments are required to pay for inspection services provided by FSIS during overtime and holiday hours of operation.

Before operations can be conducted at poultry establishments that are required to have their products federally inspected, an application for a grant of inspection must be submitted to FSIS and approved. Specified conditions must be met in order for an establishment to obtain a grant of inspection. When the ownership of an establishment changes, the location of an establishment changes, or the establishment's name changes, a new application for inspection must be submitted and approved.

The PPIA provides the USDA with a variety of enforcement tools to prevent the distribution of adulterated and misbranded poultry products and, in turn, to take actions against individuals and entities who violate the provisions of the PPIA. The term adulterated and the term misbranded are defined in the PPIA (21 U.S.C. § 453(g), (h)). The enforcement methods provided for in the PPIA include the imposition of fines and imprisonment for criminal violations, the refusal to issue a grant of inspection, the withdrawal of a grant of inspection, the suspension of inspection, the imposition of an injunction, and the detention and seizure of poultry products (21 U.S.C. §§ 461, 467, 467a, 467b, 467c).

B. Grain Inspection, Packers and Stockyards Administration (GIPSA)

Pilgrim's Pride Corporation is subject to regulation as a live poultry dealer under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et. seq.*)(“P&S

Act”). The Grain Inspection, Packers and Stockyards Administration (“GIPSA”), which administers the Act for the Secretary of Agriculture, investigates complaints that live poultry growers may not have received full payment under poultry growing arrangements with live poultry dealers. Section 410 of the P&S Act (7 U.S.C. § 228b-1). This provision may be enforced in an administrative disciplinary proceeding under which the Secretary may issue a cease and desist order, and impose a civil penalty payable of up to \$27,000.00 for each violation under section 411 of the P&S Act (7 U.S.C. § 228b-2). GIPSA also investigates complaints that live poultry dealers have engaged in unfair, unjustly discriminatory, or deceptive practices, or has made or given undue or unreasonable preferences or advantages in violation of subsections 202(a) and (b) of the P&S Act (7 U.S.C. § 192(a)(b)). The unfair or discriminatory termination of growers, or the inaccurate weighing of feed or live poultry are examples of practices that could violate these provisions. Sections 208, 209 and 210 of the P&S Act (7 U.S.C. §§ 197, 19a, 197b) impose contract requirements for poultry growing arrangements. Enforcement of these provisions would be by a civil action for injunctive relief brought by the Attorney General pursuant to section 404 of the P&S Act (7 U.S.C. § 224).

The enforcement of the P&S Act comes under the exception to the automatic stay provided by 11 U.S.C. § 362(b)(4). Moreover, the express exception provided in 11 U.S.C. § 525 for the enforcement the Packers and Stockyards Act, 1921 (7 U.S.C. § 181 et seq.), and section 1 of the Act entitled “An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes,” approved July 12, 1943 (7 U.S.C. 204) [which is the provision authorizing the suspension of registrants under the P&S Act] has been recognized by the United States Bankruptcy Court as a statement of statutory intent that

enforcement of the Packers and Stockyards regulatory program take priority even if the relief sought might have an impact on the bankruptcy goals. See *In re Farmers and Ranchers Livestock Auction, Inc.*, 46 B.R. 781, 796 (Bkrcty.E.D.Ark.1984), and *In re Fresh Approach, Inc.*, 49 B.R. 494, 497-98 (Bkrcty.N.D.Tex.1985).

C. Agriculture Marketing Service (AMS)

The Agriculture Marketing Service (“AMS”) administers provisions of the Agricultural Marketing Act of 1946, as amended (“AMA”) (7 U.S.C. §§ 1621 et seq.). This Act, along with regulations enacted under it, authorizes the Secretary of Agriculture to inspect, certify and identify the class, quality, quantity, and condition of agricultural products, and to collect fees to cover the cost of the service rendered. It authorizes these services so that agricultural products are marketed to their best advantage, trading is facilitated, and consumers are able to obtain the quality products that they desire (7 U.S.C. §§ 1622 (h)). Section 1622(h) of Title 7 of the United States Code provides for the imposition of imprisonment and fines for persons who commit specified actions including the knowing making, issuing, altering, forging, or counterfeiting of any official certificate with regard to inspection. AMS also procures goods and services, including food items, pursuant to the Federal Acquisition Regulations at 48 CFR Parts 1-53.

D. Food and Nutrition Service (FNS)

The Food and Nutrition Service (“FNS”) relationship with Pilgrim’s Pride is regulatory oversight, administrative, and monitoring responsibilities. FNS entered into a National Processing Agreement (“NPA”) with Pilgrim’s Pride in January of 2005. The NPA remains in effect until terminated by either party as detailed in Article 20 of the NPA.

OBJECTIONS TO PLAN

The USDA, on behalf of the FSIS, GIPSA, AMS, and FNS, objects to the discharge, injunction, exculpation, and release terms and provisions of the Plan as being over-broad in their application to the USDA, FSIS, GIPSA, AMS, FNS and other Governmental Units of the United States of America. The terms and provisions include, without limitation: Article X, paragraphs 10.2 *Discharge of Claims and Termination of Equity Interests*, 10.3 *Discharge of Debtors*, 10.4 *Injunction or Stay*, 10.5 *Term of Injunctions or Stays*, 10.6 *Injunction Against Interference With Plan*, 10.7 *Exculpation*, 10.8 *Releases by Holders of Claims and Equity Interests*, and 10.9 *Releases by Debtors and Reorganized Debtors*. (Plan, pages 31-33).

The Debtor, in its Disclosure Statement acknowledges that it is subject to federal government regulation:

The chicken industry is subject to government regulation, particularly in the health and environmental areas, including provisions relating to the discharge of materials into the environment, by the USDA, the Food and Drug Administration (“FDA”) and the Environmental Protection Agency (“EPA”) in the U.S. and by similar governmental agencies in Mexico.

(Disclosure Statement, II, B, 11 Regulation and Environmental Matters, page 16.)

There is no authority to excuse non-compliance by the Debtor and the Reorganized Debtor with applicable federal law and regulations or to excuse, release, or bar appropriate actions by those agencies under federal law and regulations.

Further and more specific, the USDA objects to the provisions in paragraphs 10.7 and 10.8 of Article X of the Plan, and any other provisions of the Plan, to the extent that these provisions purport to release, discharge, exculpate or enjoin any claims or causes of action against

non-debtors. Sections 10.7 and 10.8 of Article X of the Plan, for example, propose to discharge, exculpate, release and enjoin a panoply of non-debtors from a broad swath of liability.

As drafted, this amounts to a discharge of claims against non-debtors of a sort that is squarely prohibited by the Bankruptcy Code. A bankruptcy discharge is limited solely to the debtor. Section 524(e) of the Bankruptcy Code “only releases the debtor, not co-liable third parties.” *Matter of Pacific Lumber Co.*, 584 F.3d 229 at 252 (5th Cir. 2009). “These cases seem broadly to foreclose non-consensual non-debtor releases and permanent injunctions.” *Id.*

The USDA proposes to remedy this objection with the following addition to the Plan and the order of confirmation:

Nothing in the Amended Plan or the order of confirmation shall effect a release of any claim by the United States of America (“United States”) or any of its agencies, departments, or subdivisions whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws, criminal laws, or police and regulatory powers, laws, and regulations of the United States against any party or person, nor shall anything in the Amended Plan or the order of confirmation enjoin the United States from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, the environmental laws, criminal laws, or police and regulatory powers, laws, and regulations of the United States against such persons or parties, nor shall anything in the Amended Plan or order of confirmation exculpate any party or person from any liability to the United States, any of its agencies, departments or subdivisions whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, criminal laws, or police and regulatory powers, laws, and regulations of the United States against any party or person. This includes, without limitation, the Food Safety and Inspection Service, the Grain Inspection, Packers and Stockyards Administration, the Agriculture Marketing Service, and the Food and Nutrition Service of the United States Department of Agriculture. The aforementioned persons and parties include without limitation the Debtors, Reorganized Debtors, and non-debtors.

Further, the USDA, on behalf of the FSIS, GIPSA, AMS, and FNS, objects to the retention of jurisdiction terms and provisions of the Plan, including without limitation Article XII Retention of Jurisdiction, to the extent that they conflict with and attempt to divest jurisdiction over the regulatory and enforcement functions of the United States and its departments, agencies, and subdivisions from the normal courts and administrative forums with jurisdiction to hear those cases and matters.

CONCLUSION

The USDA asks that its objections be sustained and that confirmation of the Plan be denied until the above objections are resolved.

DATED November 25, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On November 25, 2009, a true and correct copy of the foregoing pleading was served by the method and to the following parties as indicated:

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